

ND-2020-3051

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Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH
TELECOMMUNICATIONS, LLC
d/b/a AT&T NORTH CAROLINA and
d/b/a AT&T SOUTH CAROLINA,

Complainant,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

Proceeding No. 20-293
Bureau ID No. EB-20-MD-004

**AT&T'S OBJECTIONS TO DUKE ENERGY PROGRESS, LLC'S
FIRST SET OF INTERROGATORIES**

Complainant BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina ("AT&T") respectfully submits the following objections to the First Set of Interrogatories filed by Defendant Duke Energy Progress, LLC ("Duke Energy Progress").

GENERAL OBJECTIONS

In addition to the specific objections enumerated below, AT&T objects to Duke Energy Progress's Interrogatories as follows:

1. AT&T objects to Duke Energy Progress's definitions of "AT&T," "you," and "your" because it is overbroad, unduly expansive and burdensome, and seeks to impose obligations to provide information that has no relevance to the material facts in dispute in this proceeding. Duke Energy Progress's definition of "you," "your," and "AT&T" is not limited to BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina, but broadly includes all "persons associated with" any of its "parents, subsidiaries, [or] affiliates" which are not party to this dispute. AT&T will not provide non-confidential and non-

privileged information beyond that involving AT&T's joint use relationship with Duke Energy Progress.

2. AT&T objects to the Interrogatories to the extent that they are "employed for the purpose of delay, harassment, or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the proceeding." *Id.* § 1.730(a). For example, Duke Energy Progress has sought detailed information about third-party use of AT&T's poles, including all of AT&T's joint use agreements and license agreements, which are not relevant to, or likely to lead to the discovery of admissible evidence regarding, the rental rate that is "just and reasonable" and competitively neutral for AT&T's use of *Duke Energy Progress's poles*. At the same time, Duke Energy Progress refused to provide AT&T's access to more than three of its approximately fifty agreements, which are relevant to the rental rate that is "just and reasonable" and competitively neutral for AT&T's use of *Duke Energy Progress's poles*. See Duke Energy Progress's Opposition and Objections to AT&T's First Set of Interrogatories at 4-6 (Sept. 22, 2020); see also Duke Energy Progress's Responses to AT&T's First Set of Interrogatories (Oct. 7, 2020) (providing only three "exemplar pole license agreements").

3. AT&T objects to the Interrogatories to the extent that they seek information that is not within AT&T's possession, custody, or control or information that is not within AT&T's present knowledge.

4. AT&T objects to the Interrogatories to the extent that they call for information that is already within Duke Energy Progress's possession, custody, or control.

5. AT&T objects to the Interrogatories to the extent that they seek discovery of legal conclusions, contentions, or information that is publicly available.

6. AT&T objects to the Interrogatories to the extent that they are vague, ambiguous, overbroad, unduly burdensome, oppressive, unreasonably cumulative, or duplicative.

7. AT&T objects to the Interrogatories to the extent that the burden or expense of answering the Interrogatory would outweigh any benefit of the answer.

8. AT&T objects to the Interrogatories to the extent that they seek information that is protected from discovery by the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Nothing contained in AT&T's objections is intended to, or in any way shall be deemed, a waiver of such available privilege or doctrine. AT&T will not provide privileged or otherwise protected information.

9. AT&T objects to the Interrogatories to the extent that they seek confidential or proprietary information. AT&T will not provide responsive, non-privileged confidential or proprietary information unless it is protected by the terms of a mutually agreeable Confidentiality Agreement.

10. AT&T objects to the Interrogatories to the extent that they seek to impose requirements or obligations on AT&T in addition to or different from those imposed by the Commission's rules. In responding to the Interrogatories, AT&T will respond as required under the Commission's rules.

11. AT&T reserves the right to change or modify any objection should it become aware of additional facts or circumstances following the service of these objections.

12. The foregoing general objections are hereby incorporated into each specific objection listed below, and each specific objection is made subject to and without waiver of the foregoing general objections.

SPECIFIC OBJECTIONS TO INTERROGATORIES

Interrogatory No. 1:

Upon execution of the JUA, did AT&T undertake any efforts to rearrange, reposition or otherwise modify its facilities attached to DEP's poles, or alternatively, has AT&T continued to utilize DEP's poles in more or less the same manner as AT&T utilized DEP's poles under the preceding joint use agreement? If AT&T undertook any efforts to rearrange, reposition or otherwise modify its facilities to DEP's poles upon execution of the JUA, please describe those efforts.

Objections:

AT&T objects to this Interrogatory because the phrases "any efforts to rearrange, reposition or otherwise modify its facilities" and "continued to utilize DEP's poles in more or less the same manner as AT&T utilized DEP's poles under the preceding joint use agreement" are vague and ambiguous. AT&T also objects to this Interrogatory to the extent that it seeks information that should already be within Duke Energy Progress's possession. AT&T further objects to this Interrogatory as overly broad and unduly burdensome in that it seeks information dating back 40 plus years that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the question of what rate is "just and reasonable" by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Energy Progress's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 2:

Does AT&T contend that Article XIII.C. of the JUA was (a) unjust or unreasonable at the time the JUA was executed, and/or (b) the result of unequal bargaining power between the parties? If so, please identify the basis for this contention, with reference to data, documents and

communications between the parties. If any part of your answer relies on the parties' relative joint use pole ownership, please explain specifically how this relative pole ownership provided bargaining leverage to one party or the other at the time of the execution of the JUA. If AT&T contends that Article XIII.C. of the JUA was just and reasonable at the time the JUA was executed, but subsequently became unjust and unreasonable, please identify the specific date on which AT&T contends Article XIII.C. of the JUA became unjust or unreasonable.

Objections:

AT&T objects to this Interrogatory to the extent it seeks legal conclusions or information already provided by AT&T in its Pole Attachment Complaint and supporting Affidavits and Exhibits. AT&T also objects to this Interrogatory as overly broad and unduly burdensome in that it seeks information dating back 20 years that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the question of what rate is "just and reasonable" by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Energy Progress's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 3:

Identify all data in your possession, as it relates to poles jointly used by DEP and AT&T, concerning pole height, the average number of attaching entities, the number of attachments owned by AT&T, AT&T's attachment height on DEP poles, and the space occupied by DEP and AT&T on each party's poles. Include in your response when the data was compiled or collected, the entity or entities that compiled or collected it, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, and/or guidelines pursuant to which the data was collected.

Objections:

AT&T objects to this Interrogatory as vague, ambiguous, overly broad, and unduly burdensome because it seeks “all data” about all poles jointly used by the parties without any time or other limitation. AT&T further objects to this Interrogatory to the extent that it seeks information that should already be within Duke Energy Progress’s possession or that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Energy Progress’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 4:

If a CATV, CLEC or wireless provider occupies more than one foot of usable space on an AT&T pole, how does AT&T calculate the applicable per pole rate? If the answer differs based on the type of entity or from entity to entity, please describe those differences.

Objections:

AT&T objects to this Interrogatory to the extent it seeks information already provided by AT&T in its Pole Attachment Complaint and supporting Affidavits and Exhibits. AT&T also objects to this Interrogatory to the extent it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Energy Progress’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 5:

State the rates, terms, and conditions for of all pole attachment or pole license agreements that AT&T has with any cable television system or telecommunications carrier within North Carolina and South Carolina, and that were in effect at any time from January 1, 2017 forward. Include in your response the name of the entity that is the counterparty to each such agreement, the dates on which the agreement was in effect, the annual pole attachment rates thereunder, and the number of each party's attachments to AT&T poles. AT&T may, alternatively, respond to this interrogatory by producing copies of each such agreement, along with the applicable rates and attachment totals.

Objections:

AT&T objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" rate that is required by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Energy Progress's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 6:

Please state whether AT&T or its currently retained contractors in DEP's service area have the training and equipment necessary to set AT&T joint use poles with DEP electric facilities attached to them, including the requisite training and equipment to work with or in close proximity to live electrical facilities. If the answer is yes, please identify those contractors and state the number of poles per year since 2017 such contractors have set in energized lines and include within your answer the voltage class of such poles.

Objections:

AT&T objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Energy Progress’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 7:

What size and type of pole(s) does AT&T set when such pole(s) will not be jointly used with DEP or another electric utility pursuant to a Joint Use Agreement? Please identify the costs incurred by AT&T in the preceding 5 years to construct non-joint use pole lines (including the cost of installing AT&T’s communication facilities) and identify the total number of poles installed.

Objections:

AT&T objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Energy Progress’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 8:

Please identify AT&T’s average cost to replace a joint use pole (including AT&T’s cost of transferring its facilities to the new pole) in 2019 and identify the number of poles replaced in 2019.

Objections:

AT&T objects to this Interrogatory as overly broad and unduly burdensome because it is not limited to AT&T's joint use poles with Duke Energy Progress. AT&T further objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" rate that is required by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Energy Progress's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 9:

At any time prior to filing its complaint, did AT&T perform any calculations or analysis to determine whether the scheduled costs in Exhibit B of the JUA result in cost savings to AT&T and/or result in under-recovery by DEP of its actual costs? If so, please state the results of such calculations or analysis.

Objections:

AT&T objects to this Interrogatory to the extent it seeks legal conclusions or information already provided by AT&T in its Pole Attachment Complaint and supporting Affidavits and Exhibits. AT&T also objects to this Interrogatory because it includes no time limitation, requests privileged information, and seeks information about Duke Energy Progress's costs that is not available to AT&T. AT&T further objects to this Interrogatory to the extent it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" rate that is required by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Energy Progress's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 10:

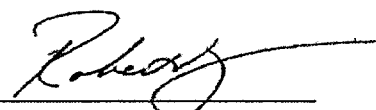
Of the approximately 148,000 DEP poles to which AT&T is currently attached, how many (if any) of those poles did AT&T pay to replace at the time AT&T made its initial attachment(s)?

Objections:

AT&T objects to this Interrogatory as overly broad and unduly burdensome in that it includes no time limitation. AT&T also objects to this Interrogatory to the extent that it seeks information that should already be within Duke Energy Progress's possession. AT&T further objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" rate that is required by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Energy Progress's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Respectfully submitted,

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Dated: November 20, 2020

*Attorneys for BellSouth Telecommunications,
LLC d/b/a AT&T North Carolina, and d/b/a
AT&T South Carolina*

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2020, I caused a copy of the foregoing AT&T's
Objections to Duke Energy Progress, LLC's First Set of Interrogatories to be served on the
following (service method indicated):

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